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6 December 5th, 2008

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Ch. 11 Circuit City Stores, Inc.

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Transcript of testimony and other incidents in the

15 above, when heard on December 5th, 2008, before the

16 Honorable KEVIN R. HUENNEKENS, Judge.

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1                           THE CLERK: In the matter of Circuit  
2 City Stores, Inc., case number 08-35653, hearing on  
3 items one through 33 as the matters for today's  
4 docket.

5                           MR. FOLEY: Good morning, Your Honor,  
6 Doug Foley on behalf of the debtors.

7                           First I want to thank the Court for the  
8 opportunity for the last hour to try to work out  
9 some additional resolutions that are on the agenda,  
10 and I believe we have done that.

11                          Today with me at Counsel's table is  
12 Gregg Galardi from the law firm of Skadden, Arps,  
13 Slate, Meagher & Flom. And here from the company  
14 today, Your Honor, on the front row is Mr. Jim  
15 Marcum, Chief Executive Officer, as well as Bruce  
16 Besanko, the Chief Financial Officer for the  
17 company, Reggie Hedgepeth, who is the General  
18 Counselor for the company. Also we have Chris  
19 Crowe, who is Director of Real Estate, who is with  
20 the company as well, Your Honor.

21                          THE COURT: All right.

22                          MR. FOLEY: Your Honor, we did file an  
23 amended agenda last night. If Your Honor doesn't  
24 have a copy, I would --

25                          THE COURT: I do have a copy

1 and I reviewed it.

2 MR. FOLEY: All right. We would  
3 essentially like to file that agenda, Your Honor,  
4 with a couple of exceptions, some settlements,  
5 resolutions.

6 Just to go through starting with  
7 item number one, this is a motion to file schedules  
8 and statements. Our anticipation is to file next  
9 week and give notice to parties by December 19th.  
10 So although we ask for the end of the month we  
11 anticipate filing this next week. And the motion  
12 has not been opposed and we would ask permission to  
13 submit an order.

14 THE COURT: That will be granted.

15 MR. FOLEY: Thank you, Your Honor.

16 With respect to items number two,  
17 three and four, and seven, these are special  
18 employments applications.

19 The first one for our firm is for Counsel  
20 for debtors. And also with respect to item number  
21 three, application for Kirkland & Ellis to employ as  
22 special financing counsel; and also application,  
23 number seven, none of those applications have been  
24 opposed.

25 We also have, Your Honor, an employment

1 application for Ernst & Young as tax consultants.  
2 We would ask the Court -- there has been no  
3 objections with respect to those applications and we  
4 would ask the Court for permission for those  
5 applications.

6 THE COURT: Does any party wish  
7 to be heard in connection with the proposed  
8 applications?

9 All right. They will be granted.

10 MR. FOLEY: Thank you, Your Honor.

11 With respect to the application of  
12 Rothschild as Investment Banker and Financial  
13 Advisor, as the agenda reflects, Your Honor, the  
14 Committee had until yesterday afternoon to object,  
15 we have been working through their issues. And I  
16 believe we have agreed on a resolution of their  
17 issues. We would like the US Trustee's endorsement  
18 on these orders to submit those orders as well.

19 THE COURT: All right.

20 MR. FEINSTEIN: Good morning,  
21 Your Honor. I'm Robert Feinstein, Counsel for the  
22 Creditor's Committee. We have been working  
23 delinquently with Debtor's professionals including  
24 directly with Rothschild on modified terms  
25 essentially changing, in many cases reducing the

1 proposed structure. It's consistent as part of a  
2 whole, Your Honor, but which you will see reflected  
3 in a number of pleadings we filed.

4 We are trying to do our best, Your  
5 Honor. And you will see a number of positions the  
6 Committee is taking. We are trying to reduce the  
7 administrative burden to make sure that any dollars  
8 that doesn't need to go out the door don't go out  
9 the door today. It's somewhat controversial, I  
10 guess, but in many cases these are sale tax  
11 payments, and employee payments, and so forth. We  
12 are obviously in a challenging time and with that in  
13 mind, on a number of the applications, including  
14 these two professional applications the Committee is  
15 the way it is. The specific terms of Rothschild and  
16 FDI that we agreed to would be reflected in terms of  
17 the order that we are working on. And we would  
18 submit those on consent of the Committee and  
19 debtors, Your Honor.

20 THE COURT: Very good.

21 Does any other party wish to be heard?

22 All right. Then with the consent of the  
23 Committee and the approval of the Office of the US  
24 Trustee the Court will approve those applications.

25 MR. FOLEY: Thank you, Your Honor.

1                   Item number eight on the agenda is  
2                   a motion to file certain documents under seal. And  
3                   if I could just pass over that one for a moment  
4                   because the underline motion is contested so it was  
5                   not reflected to deal with those together.

6                   Item number nine, Your Honor is the  
7                   motion to establish compensation procedures, and  
8                   that motion also is not opposed. But there is one  
9                   amendment to the procedures and we have spoken with  
10                  the Office of the US Trustee today before the  
11                  hearing. And we are going to make an amendment to  
12                  that one with their endorsement and submit that to  
13                  Your Honor.

14                  THE COURT: Does any party wish to  
15                  be heard in connection with that motion?

16                  All right. The Court will approve  
17                  that as amended with the endorsement of the Office  
18                  of the US Trustee.

19                  MR. FOLEY: Thank you, Your Honor.

20                  With items number ten on the docket,  
21                  Your Honor, this is a matter involving our motion to  
22                  procedures, we have resolved one of the objections.  
23                  We have not resolved the other objection but we are  
24                  working through that. And for the procedure order  
25                  we ask that this be adjourn to the December 22nd

1 docket.

2 THE COURT: That will be adjourn.

3 MR. FEINSTEIN: Thank you, Your Honor.

4 And with item number eleven,

5 that motion, Your Honor, and there had been  
6 significant objections to that. We are also working  
7 with the Committee with respect to that to work  
8 through that as well. And we ask that every thing  
9 related to matter eleven be adjourn to December  
10 22nd.

11 MR. GALARDI: We have been working with the  
12 Committee and we understand that they have  
13 objections to that. We met with them yesterday and  
14 we also have been working very hard with them. We  
15 are currently putting it over to December 22nd. We  
16 may actually come back on January 16th. I think  
17 that is another date we have. I just want to give  
18 Your Honor notice of that because we may just simply  
19 file a notice say it's further adjourned. Some  
20 people in the courtroom know that we may not be done  
21 December 22nd. Again, as Mr. Feinstein said we have  
22 made a lot of progress with negotiations between  
23 ourselves, the Committee, so for now we would like  
24 to put it off to December 22nd.

25 THE COURT: All right. That will

1 be adjourn to December 22nd.

2 MR. DUNCAN: Your Honor, if we could be  
3 heard on that please?

4 THE COURT: Yes.

5 MR. McJuskin: Your Honor, John  
6 McJuskin on behalf of Bethesda Softworks, LLC.

7 THE COURT: Bethesda Softworks?

8 MR. MCJUSKIN: Yes, Softworks, LLC.

12 THE COURT: Yes.

13 MR. CARRIGAN: Good morning, Your Honor,  
14 Daniel Carrigan.

15 THE COURT: Carrigan?

16 MR. CARRIGAN: Yes, Your Honor.

1                   Thank you, Your Honor.

2                   THE COURT: If we address that today it  
3                   will certainly be taken up at that time.

4                   MR. CARRIGAN: Thank you, Your Honor.

5                   MR. FOLEY: One matter we would like to  
6                   take out of order Your Honor relates to the motion,  
7                   the 9019 motion of Panasonic, which is item number  
8                   31 on the agenda. The Committee filed an objection  
9                   to that settlement. Late last night I believe a  
10                  settlement had been worked out with respect to that.  
11                  And counsel to the Committee are here towards that  
12                  settlement.

13                  THE COURT: All right.

14

15                  THE COURT: Please identify yourself each  
16                  time you come to the podium so we have it on the  
17                  record.

18                  MR. FEINSTEIN: Certainly.

19                  Robert Feinstein for the Debtor's  
20                  Committee. Your Honor, the amendment that we made  
21                  that we reflected in a memorandum form agreement  
22                  with them and debtor has the attached of a form of a  
23                  consent order to be submitted. It certainly makes  
24                  changes.

25                  One is to address the treatment of

1       Panasonic claims with respect of merchandise that  
2       was sold prepetition. The initial motion and  
3       agreement there were to be a payment to Panasonic  
4       for that amount. And there was an agreement by  
5       Panasonic to sale, both of those provisions are out.  
6       So all rights are reserved with respect to  
7       prepetition cosignment. There is no obligations on  
8       Panasonic's part to sale on credit. They will be  
9       selling on CIA terms.

10                   But with all other respects the agreement  
11       will be respected and the provision in the agreement  
12       for the sale of the remaining merchandise that is  
13       still in debtor's possession. And the agreement we  
14       will submit Your Honor will address all of that.

15                   THE COURT: Thank you.

16                   Does any other party wish to be heard?

17                   MR. SMITH: Good morning, Your Honor, J.R.  
18       Smith on behalf of Panasonic. Here with me today is  
19       Mr. David Hillman.

20                   THE COURT: Thank you.

21                   MR. HILLMAN: Good morning, Your  
22       Honor. I heard what Mr. Feinstein had to say with  
23       regard to settlement agreement. That was accurate.  
24       However we did take great pains last night and this  
25       morning to memorialize the changes to the settlement

1 agreement and to the order. And to the best of my  
2 knowledge there is no dispute or issue with respect  
3 to the settlement agreement or the order and we are  
4 simply at house keeping phrase for the order to be  
5 submitted. So to my knowledge there is no further  
6 negotiation and it is just a house keeping matter at  
7 this point.

8 THE COURT: Very good. Thank you.

9 MR. HILLMAN: Thank you, Your Honor.

10 MR. FEINSTEIN: That's right, Your Honor.

11 I think I left out one thing, Your Honor, that Mr.

12 Hillman will appreciate me saying. We are in  
13 discussions but I don't think it has been formulated  
14 or resolved to development program to provide trade  
15 support and administrative support for the company.

16 THE COURT: Very good. Thank you.

17 MR. MATSON: Good morning, Your Honor.

18 Bruce Matson here on behalf of Bank of America.

19 This happened very recently. We did have an issue  
20 in how this would be resolved. We would like to see  
21 the final order. We don't anticipate any issues.

22 Mr. Gelardi assured me that we don't have an issue.

23 We would like to look at the order before it gets

24 enters.

25

25 MR. FEINSTEIN: Just so Your Honor

1 has some background, we would have needed amendment  
2 if it came down to prepetition status. The banks  
3 were waiting to see how the Committee reacted. This  
4 happened late last night around 11:00 or so.

5 THE COURT: Very good. Thank you.

6 So with the amendments stated on  
7 the record the Court will approve that order when it  
8 comes in.

9 MR. FOLEY: Thank you, Your Honor.

10 Your Honor, the next two items  
11 we would like to take up involve a motion  
12 Shopping.com, those are items number eight, which is  
13 unimposed and item number 26, which was filed  
14 yesterday. Mr. Cohen is here for Shopping.com.

15 THE COURT: Thank you.

16 MR. CONDYLE: Good morning, Your Honor,  
17 Michael Condyles on behalf of Shopping.com. I would  
18 like to present to the Court Jeff Cohen. We have  
19 submitted a motion, it has not yet been entered.  
20 And I would ask that he be permitted to speak before  
21 the Court.

22 THE COURT: He may.

23 MR. COHEN: Good morning, Your Honor,  
24 Jeffrey Cohen on behalf of Shopping.com.

25 Your Honor. I think this should be

1       pretty short. In essence, our motion is a request  
2       for adequate insurance (inaudible) and  
3       acknowledgement from Debtors and the Court that any  
4       postpetition service provided and qualify, and a  
5       request to the alternative. I'm not going to go  
6       through all of this. I think we can narrow it down.

7                     Basically Shopping.com is an online  
8       capacity website. It permits the debtors to post  
9       advertisements of the sale items on Shopping.com  
10      depending on what the debtors pay or intend to pay  
11      Shopping.com dictates where their adds would be  
12      placed on the site.

13                     The higher priority the logo of Circuit  
14      City logo will appear next to the sale the link  
15      saying price, it will have a logo. When they click  
16      on that logo it will go to Circuit City.com and that  
17      occurs a fee within Shopping.com.

18                     In addition to that Shopping.com  
19      in working with the debtors work to optimize the  
20      relationship. By doing that the debtors will be  
21      struck then to negotiate deals with third party  
22      vendors on behalf of it.

23                     For example, not many people go  
24      directly to Shopping.com. They go to google and  
25      they put in a television they would like to see with

1 various sale prices across the internet.  
2 Shopping.com will negotiate with google that when  
3 that item is searched on google then Shopping.com  
4 will have a higher priority towards the top of the  
5 first page. And when you go to Shopping.com on  
6 google and you go to Shopping.com Circuit City will  
7 be highly listed.

8 So Shopping.com encourages cost in  
9 negotiation with vendors. And then when a consumer  
10 clicks on Shopping.com it results in a charge and  
11 Shopping.com then gets reimbursed for that.

12 What we are asking for today is it seems  
13 that the debtors have acknowledge at least in part  
14 in their objection is that a minimum in order  
15 acknowledging postpetition services will  
16 characterize that any click by a consumer on  
17 Shopping.com that results in the routing of the  
18 CircuitCity.com website will qualify as an  
19 administrative expense claim.

20 The debtors do say in their  
21 objection that they have no objection to that if we  
22 can prove that in addition to a transaction -- Your  
23 Honor, I believe if you review paragraph 18 in the  
24 debtor's objection and has admitted as a part of the  
25 admission by the debtor's clear statement that the

1 debtors would be severely prejudiced if Shopping.com  
2 terminated the agreement.

3 The debtor's successful  
4 reorganization is dependent upon remaining a high  
5 level of sales particularly during the holiday  
6 season, the internet in particular, and Shopping.com  
7 in particular provides crucial avenues by which the  
8 debtors may obtain this.

9 Without Shopping.com services the  
10 debtors suspect a decline in sales at their on line  
11 stores. So I think at a minimum an acknowledgement  
12 of postpetition services would qualify as  
13 administrative expense claim and of course we heard  
14 the debtor's response. I don't believe that would  
15 be a disputed issue.

16 Shopping.com now request in addition to  
17 that is not the long list of items I mentioned in  
18 the motion, we are not going to ask Your Honor today  
19 to give us that. I do ask Your Honor, because  
20 unlike your typical relationship with a vendor or  
21 service provider, since Shopping.com is going out  
22 and expending cost on behalf of the estates and  
23 issue bills on a 30 days basis. So at the end of  
24 the month they will issue a bill by the 15th day of  
25 the month then its 30 days terms. It often results

1       in Shopping.com extending resources and sometimes  
2       waiting 60 to 90 days of providing 60 to 90 days  
3       worth of services before we would know whether  
4       payment on that first bill, that first month, will  
5       be made on a timely basis.

6 So Shopping.com's request is a  
7 deposit, not to different from a treatment of a  
8 utility product, as an internet provider. I think  
9 you can draw a parallel between the services of  
10 Shopping.com and a utility provider.

11 Your Honor, considered a utility deposit  
12 provide a two week deposit to provide services for  
13 30 days. Shopping.com would make a similar request  
14 for a deposit to protect them especially since out  
15 of pocket may occur. In addition, Your Honor, that  
16 we bill every 30 days with a 30 days notice, go out  
17 and pay on behalf of the estate. What I would ask  
18 Your Honor to do is to permit Shopping.com to issue  
19 a bill every 15 days and maintain a 30 days notice,  
20 but this way we are just trying to figure out  
21 different avenues of providing Shopping.com with  
22 that little bit more of protection and yet  
23 maintaining the use of the services for Circuit City  
24 through the critical holiday season and in light of  
25 electronics through the uptake for this. We want to

1 make sure they can continue to use the services and  
2 be permanently listed.

3 THE COURT: Thank you.

4 MR. FOLEY: Your Honor, Doug Foley on  
5 behalf of the debtors. We filed our response and we  
6 plead out the arguments in the papers that the  
7 request for relieve of motion although we appreciate  
8 Mr. Cohen backing off some of the request from the  
9 motion. But it is still essentially -- they are not  
10 seeking 365(B)2 because it is too early for us to do  
11 that.

12 If they want to send us bills more often  
13 then they are free to send us bills more often as  
14 long as we are not obligated to pay them more often.  
15 What they have asked for is no different from any  
16 other contract party, the third party --  
17 Shopping.com with extending cost of credit to  
18 provide the service, we don't have that in this  
19 case. We are sympathetic to their position. We  
20 would ask the Court to deny their motion.

21 THE COURT: What does the contract say  
22 about the billing cycle?

23 MR. FOLEY: It is every 30 days I believe.  
24 Thirty days for the bill, thirty days to pay.

25 THE COURT: Thank you.

1                   Does any other party wish to be heard in  
2 connection with this matter?

3                   Mr. Cohen, do you wish to reply?

4                   MR. COHEN: Your Honor, I'll be  
5 brief. Just to address the debtor's points, I  
6 believe it's performed in the contract. The  
7 contract does not require that we go out and pay  
8 third parties providers to risk this we do that at  
9 the instruction of CircuitCity.com. Their account  
10 manager talks to our account manager and request  
11 that we go out and make payments -- we are obligated  
12 to perform, we will. We are under no obligation to  
13 negotiate third party vendors for higher placements  
14 on the website. We do that at the request of the  
15 company.

16                  THE COURT: With regard to that,  
17 what are you asking me to do, isn't that just a  
18 matter of business negotiations between you and  
19 Circuit City?

20                  MR. COHEN: All I'm asking  
21 Your Honor to do is to protect us from posting  
22 deposit. If Circuit City wants to pay us in advance  
23 and say I am willing to pay you to pay them, that's  
24 fine too. But I think it's less burdensome on  
25 Circuit City to post a two week deposit

1 and then be able to run up credit with us  
2 on terms as opposed to us delaying the  
3 listing by demanding cash in advance.

8 MR. COHEN: Your Honor, I believe

9 we can negotiate directly with them and I

10 advised my client of that. I think in these

11 economic times people are looking for a second

12 degree of comfort. They have seen comfort

13 given to others similarly situated creditors.

14 If you look at utility motion, there are nine

15 included, there is a third party vendor who

16 consolidates the utility bills. That vendor

17 does not qualify as utility but is getting a

18 deposit. I think what my client is looking

19 for is the comfort that may go out of pocket

20 that they have something protecting them,

21 that they will in fact get reimbursed. So if

22 they fail to pay a bill they will have a deposit

23 there. We are a unique party involved.

24 We are critical for their online services.

25

1 Your Honor this will impact the debtor's  
2 ability to operate on line would be significant. A  
3 request for a two week deposit is a \$100,000.00  
4 issue in a multi billion dollar case. I think it  
5 would be beneficial for the debtor to be willing to  
6 post that deposit.

7 THE COURT: Thank you.

8 Is there anything further?

9 MR. COHEN: I appreciate your time.

10 THE COURT: Thank you.

11 The Court will grant the motion for  
12 filing documents under seal with regard to the  
13 motion for adequate insurance of payment. The Court  
14 is going to deny that motion. I'm not going to  
15 require a two week deposit. And I think the parties  
16 are in agreement that post petition transaction are  
17 to administrative expense status and will submit an  
18 order to that and will grant that.

19 MR. FOLEY: Thank you.

20 MR. COHEN: Your Honor, may I be  
21 excused?

22 THE COURT: You may be excused. Thank  
23 you.

24 MR. FOLEY: Your Honor, the next  
25 item is number 12.

1 THE COURT: Thank you.

2 MR. GALARDI: Good morning, Your Honor,  
3 Gregg Galardi on behalf of the debtors.

4 Your Honor, the next motion is  
5 item number 12. We have addressed this on the first  
6 day. As I pointed out, Your Honor, on the first day  
7 I did point out what I think may be the most  
8 controversial, in particular, and as I pointed out,  
9 Your Honor, and I will proffer the testimony of Jim  
10 Marcum, who is the active CEO and President, and the  
11 Committee agrees that we can do this by proffer.

12 They will be free to cross if they so desire.

13 Mr. Marcum is the acting CEO and  
14 President of the company and Vice Chairman of the  
15 Board. I thought it was important to express his  
16 position of why we continue to support our former  
17 employees and our request for continuing what we had  
18 called (inaudible). But as I pointed out Your  
19 Honor, there are two decisions that have been  
20 recently rendered by prepetition obligations  
21 probably entired priority and probably not entitled  
22 to administrative expenses. As I noted, Your Honor,  
23 on the first day we acknowledged that and we still  
24 believe for other reasons that these statements are  
25 important for Circuit City to make.

17 Mr. Marcum would also testified that  
18 approximately 4.4 have already been paid to those  
19 employees. Your Honor, Mr. Marcum would say that  
20 the relief would be in the best interest of the  
21 company notwithstanding the fact that claims made be  
22 only priority or to some extent unsecured on the  
23 following basis.

If he was called as a witness, he would  
testify that many of the people were given

1 significant time and effort and in some instances  
2 have worked their lives at Circuit City. It was an  
3 unfortunate fact that the company had to take but  
4 nonetheless the needs of these employees and their  
5 wages are still in the best interest and reasonably  
6 necessary to the reorganization for these two  
7 reasons.

8 First of all, Your Honor, these  
9 people are still in the community and are still  
10 loyal customers of Circuit City and it is important  
11 for us to continue with the customer loyalty and the  
12 goodwill of these employees. So therefore it was  
13 important to treat them what we believe is right.

14 Importantly, Your Honor, and Mr. Marcum  
15 would testify that it is also critical for the  
16 morale for the still 30 or 33 thousand people still  
17 at Circuit City. In deed, Your Honor, there has  
18 been many questions that if Your Honor doesn't  
19 understand then Mr. Marcum could testify that there  
20 had been many meetings with people who are still  
21 employed and still concerned about their own wages  
22 and benefits. Termination rights, Your Honor, which  
23 Mr. Marcum is familiar with having been in this  
24 situation before with the fact that contracts go  
25 unforceable and there are benefits and other

1 programs. We don't have a retention program at this  
2 company at this point and time.

3 Your Honor, Mr. Marcum would  
4 testify that we have limited availability, but  
5 nonetheless, Mr. Marcum would still testify that  
6 what he thought was in the best interest and what  
7 the company determined to be in the best interest  
8 was to treat these employees the way they did  
9 because of the need to continue to have the 30 some  
10 thousand work force in the company, still believes  
11 in the company and still believes in the employees,  
12 and that they are instrumental and the company  
13 achieving the business plan for these companies.  
14 And therefore he still believes it is in the best  
15 interest notwithstanding the four million that has  
16 gone out the door, and notwithstanding the fact that  
17 we are still requesting a four million to go out the  
18 door because it would have a spill over affect, not  
19 only on the customer base, but the customers in the  
20 community, and also a negative impact on those  
21 employees that are still in the company. And at  
22 this critical time and this critical time of the  
23 year that making each payment and with these  
24 employees, that although it may not be required  
25 under the law, that the four million dollars should

1 still be paid.

2 Finally, Your Honor, we would  
3 also note that if Mr. Marcum was called to testify  
4 that it was somewhat to his nature or accidental  
5 nature, that we gave similar notices, as Your Honor  
6 knows, with respect to store closing employees, but  
7 because they were actually store closing employees,  
8 those people are going to be paid essentially the  
9 same notice that they fortunately will be able to  
10 work out their entire time as store level employees.  
11 So it looks like all of those employees would get  
12 essentially the equivalent notice, although they  
13 were too notified prior to bankruptcy that their job  
14 would be terminated. So they continued to work at  
15 the store level.

16 Your Honor, again, Mr. Marcum, would  
17 further testify that these payments were in the  
18 budget that we presented to the Court, that they  
19 were negotiated with the lenders, that the lenders  
20 understood the company's position and accommodated  
21 the company's position.

22 So then, again, Your Honor, Mr. Marcum  
23 would testify that he believes it is in the best  
24 interest of the company and at this time to make the  
25 business plan achievable to continue to make these

1 payments and make the balance of those \$4,000,000.00  
2 payments. That would be Mr. Marcum's testimony.

3 THE COURT: Does any party wish  
4 to examine Mr. Marcum with regard to the proffer  
5 testimony?

6 All right. The Court will accept the  
7 proffer.

8 MR. GALARDI: Your Honor, I guess  
9 it comes down to some legal argument. Your Honor,  
10 the legal argument I think fails us here as the fact  
11 that unless Your Honor wants to go against the two  
12 opinions that we've seen, there are two clear  
13 opinions out there today, which say we gave notice  
14 of termination and we are not contesting those  
15 facts. We gave notice of termination prior to  
16 filing. And those two opinions would say that you  
17 terminated there is a prepetition that is priority  
18 perhaps, the ten thousand, I think these people got  
19 that amount or close to it. So there is another  
20 balance that would be an unsecured claim.

21 Again, if you look strictly at the  
22 employees that's probably the law. But as the law  
23 defines whether it was necessary for the  
24 reorganization, Your Honor, we think this Court has  
25 the power to authorize their payments.

1 And Mr. Marcum's testimony  
2 would be that but I can't put intangible when we get  
3 \$4,000,000.00 in benefits, or \$5,000,000.00, the  
4 goodwill of these employees, the loyalty of these  
5 employees, the dissimilar treatment although for  
6 legal grounds that they are not the same as the  
7 store level employees to keep these corporate  
8 headquarters employees. And then the signal  
9 that it sends to the rest of the corporate  
10 employees who are being asked during this period,  
11 which is a difficult period, to keep their head in  
12 the game and to maximize value and to achieve a  
13 business plan when it is obvious to them that  
14 currently times are bad, the programs they have  
15 counted on, the contracts, all of those things as  
16 Your Honor knows we cut back significantly, servants  
17 payments, those sort of things may not be available  
18 even for those employees currently but to send a  
19 signal that we are going to do everything for our  
20 employees that the Court wants.

THE COURT: Thank you.

22 MR. FEINSTEIN: Robert Feinstein  
23 with the official creditor's committee. Your Honor,  
24 the Committee's objection to this motion was not  
25 taken likely. We are sympathetic with the employees

1 and we understand the hardships this might cause  
2 them. We appreciate that some of the money has gone  
3 to them. So it's not all or nothing at all. But as  
4 the representatives of the creditors of this  
5 enterprise looking out for all of the constituents,  
6 vendors, landlords, the current employees, the 30  
7 some odd thousand employees who would be devastated  
8 if Circuit City doesn't survive Ch. 11. We felt it  
9 necessary to take the position on this and a number  
10 of other motions today. It's difficult. It's  
11 difficult to understand the consequences of  
12 withholding payments to not just employees, but  
13 taxing authorities, the landlords, Panasonic, who  
14 wanted to get paid nine million.

15 Your Honor, eight million here, nine  
16 million here, thirteen million here, pretty soon you  
17 are talking about no money. And we live in very  
18 uncertain times. As Mr. Cohen said it is a very  
19 challenging economic environment. And all one needs  
20 to do is read in the newspaper every day to see the  
21 kind of challenges that Circuit City is facing, that  
22 other retailers are facing, that the vendors and the  
23 landlords are facing. Everybody has some real  
24 hardship here. We are trying to pull together in a  
25 certain effort to make sure that Circuit City

1 remains as a viable enterprise for the thirty some  
2 thousand that are still employed and for the benefit  
3 of vendors who are looking for a good customer in  
4 Circuit City, and for the benefit of the landlord  
5 who do not want empty, dark stores.

6 So this is very difficult and it is  
7 unfortunate that some people along the way will feel  
8 hardship, but it's a shared hardship Your Honor.

9       This is not a step we took lightly. The Committee  
10      is comprised not simply of vendors, but some  
11      landlords, and PPVC, and a class action on behalf of  
12      employers. And all of them unanimously agreed and  
13      support the filing of this objection. It is not  
14      something, as I said, we did lightly.

20 THE COURT: Well those cases are not  
21 binding on this Court --

22 MR. FEINSTEIN: Your Honor, this  
23 is a case of first impression. We are asking Your  
24 Honor to follow those cases on the law and as a  
25 matter of doctrine of necessity. I will

1       certainly make the argument, Your Honor,  
2       that it is necessity dealing with the other  
3       end, that we not send any money unless we  
4       certainly have to in order for the greater  
5       good to be pursue. So we are asking Your Honor to  
6       deny the motion.

13 MR. FEINSTEIN: There are any number of  
14 legal issues that could be raised before Your Honor,  
15 company management, this is a discreet issue in one  
16 of many. I don't know if it is typically burdensome  
17 for the company to have to deal with this issue. If  
18 Your Honor follows this it would end up priority  
19 unsecured claims so will be treated in the order of  
20 the bankruptcy code of their case. I don't know if  
21 there is really much more than a discreet legal  
22 issue for a lawyer to address and for Your Honor to  
23 decide.

24 THE COURT: Thank you.

25 Does any other party wish to be heard in

1 opposition to the motion?

2 MR. GALARDI: Your Honor, there  
3 is the distraction argument. I also note that those  
4 cases may technically apply on legal principals,  
5 those were liquidated cases, and one of the things  
6 we considered and that is why we looked to Mr.  
7 Marcum testify by my proffer is that we were  
8 actually looking to what affect this would have on  
9 the current employees and that is why we are  
10 relying to a large extent of the doctrine of  
11 necessity.

12 Your Honor points to another  
13 aspect of this. You are absolutely right, there is  
14 time and distraction. There is with any prepetition  
15 claim but the reason those cases got brought was  
16 because as soon as you didn't pay this you have  
17 class actions in the first days of the case.

18 Again, based on all of these  
19 things in consideration of making decisions, they  
20 made the decision, that is to make sure when you are  
21 letting a person go out of this company, this was a  
22 major layoff as Your Honor knows. It was 500 people  
23 at the corporate headquarters right here. So all of  
24 those consideration, although maybe not legally  
25 technical and that is what the doctrine

1 of necessity goes to it is reasonably necessary to  
2 affect a reorganization. We are not liquidating  
3 right now. We are not hopping to ever liquidate  
4 right now. You will see when we get to the landlord  
5 matters we are already trying to and I think the  
6 Committee is to reorganize. With that as the  
7 motivation, I think there is legal authority under  
8 105 even if Your Honor wanted to follow the strict  
9 reading of the two other cases to still authorize  
10 the relief. There is plenty of relief we have done  
11 first day, that is not stricken within the  
12 bankruptcy code. The question is the reasonable  
13 necessary to reorganization and the company's  
14 position is this is reasonably necessary  
15 to have this company to have a opportunity to  
16 reorganize and we ask that you grant that.

17 THE COURT: Thank you.

20 All right. The Court has read  
21 the paper that has been filed and with the  
22 testimony that has been offered today in the  
23 argument of Counsel. The COurt agrees with the  
24 company to exercise its business judgement.  
25 I think it would be disruptive. I'm not going t

1 rule today on whether claims entitled to  
2 administrative expense status, that remains an open  
3 issue and one that weighs heavily on the Court in  
4 making this decision. I think that given the  
5 testimony, the proffer testimony, would indicate a  
6 large number of people remain in the community and  
7 would need the company for its existing employee's  
8 morale that the Court will approve the motion and  
9 overrule the objection of the Committee. I did not  
10 take the Committee's objection lightly. And I think  
11 it is a very strong argument. I think in this case  
12 that the motion should be granted.

13 MR. GALARDI: Thank you, Your Honor.

14 Your Honor, I would ask permission  
15 that Mr. Marcum be excused so he may go back to the  
16 company?

17 THE COURT: Yes.

18 MR. GALARDI: Thank you, Your Honor.

19 Your Honor, with respect to the next  
20 motion on the agenda, I think I will be dealing with  
21 the rest of them.

22 Matter number 13 on the agenda  
23 is again one of the first day motions that the  
24 Committee has looked seriously too. It is the  
25 motion to pay sales, use, trust fund, and other

1 taxes. There were multiple bases for these  
2 payments. Your Honor, we filed an amendment, or an  
3 amended motion to seek payments I think an  
4 additional \$10,000,000.00 payments. What I believe  
5 we have agreed to with the Committee and again we  
6 are not saying things we don't believe in and the  
7 Committee has raised a very valid objection to the  
8 payment of sales, use and other taxes. We have been  
9 working on many things. We have not been able to  
10 provide them with all of the information with  
11 respect to these amended taxes. What we have agreed  
12 to do is have an agreement, and whether we are going  
13 to do it as a separate order or otherwise, where we  
14 will not pay these sales, use and other taxes until  
15 we give the Committee the information and whether  
16 there are Trust Fund, taxes, or other reasons until  
17 the Committee agrees that we can pay those.

18 And should we have a dispute  
19 then we will come back on the 22nd with respect to  
20 any disputes. We hope not to have any issues with  
21 that. But we would like to be able to convince the  
22 Committee either that their trust fund, taxes, or  
23 some other reason that they should pay because I  
24 don't think the Committee wants -- trust fund taxes  
25 are not property of the estate. So what we have

1 agreed to do is give them five days notice of that  
2 kind of information and if there is an objection to  
3 that in that five days then we would not pay it. If  
4 there is no objection then we would be authorized to  
5 pay it and that is how we will deal with any money.  
6 And I'm not going to just limit it to the  
7 supplemental, to the extent if there is any money  
8 from the original budget, or with respect to  
9 additional money we will apply with that procedure.  
10 And I think Mr. Feinstein is okay with that  
11 procedure.

12 THE COURT: All right.

13 Mr. Feinstein.

14 MR. FEINSTEIN: Yes, Your Honor, I can  
15 confirm that we are okay with that procedure as with  
16 a number of these matters we are trying to work out.  
17 I do want to just signal that the position we  
18 continue to take is that if these are  
19 demonstratively trust fund taxes, not just property  
20 of the estate, it would be appropriate for the  
21 debtor to obtain them. But if it's any other kind  
22 of nontrustfund payment of prepetition claim then  
23 we are going to oppose it.

24 THE COURT: Very good. So that will be  
25 approved as modified.

1                   I think Mr. Stein wants to --  
2                   MR. STEIN: Richard Stein on  
3 behalf of the Internal Revenue Services, Your Honor.  
4                   I am at a little bit at a lost on this one because  
5 when I read it, and what has been described here  
6 today seems to be a little bit different than at  
7 least my reading of it, and it won't be the first  
8 time that I'm wrong. But I have a great problem if  
9 the company intends on not paying over on the 941  
10 taxes, certainly the trust fund portion as well as  
11 the corporate payment of the 941 taxes. So to the  
12 extent that it doesn't deal with each time there is  
13 a salary payment made to any employee the company  
14 pays into the federal government or to the  
15 depository account payments. If they are going to  
16 continue to do that I have no problem, otherwise I  
17 have a great deal of problem with any kind of order  
18 that would authorize the nonpayment of taxes.

19                   THE COURT: This order doesn't authorize  
20 the nonpayment of taxes. The order that I  
21 previously entered authorized the debtor to pay  
22 these type of taxes and now with it being modified,  
23 it is only that the debtor is going to give five  
24 days notice to the committee before they make a  
25 payment. And then if the Committee objects to it

1       then you would have to discuss it with the Committee  
2       and if nobody agreed then we can come back and I can  
3       make a ruling. But right now I am not authorizing a  
4       nonpayment of anything.

5 MR. STEIN: Thank you. I apologize.

6 THE COURT: You make a good point.

7 MR. STEIN: Thank you.

8 MR. GALARDI: Your Honor, we  
9 understood it as just the authorization you gave us  
10 is subject to Committee approval on those matters,  
11 and the Committee was clear on its position.

12 Your Honor, that then takes us to  
13 matter 14.

14 THE COURT: For the record, Mr.  
15 Galardi, I will approve that with the amended that  
16 you described.

17 MR. GALARDI: And, Your Honor, I think  
18 the Committee as we anticipate I think it will  
19 probably be more affective in going back and  
20 modifying what Your Honor has already entered. We  
21 have had a proposed stipulation that we addressed,  
22 you will see the Committee has certain concerns  
23 before we take certain actions. I would add this  
24 one to that order. Hopefully we will be submitting  
25 under separate covers Your Honor an order saying

1 here is how the Committee and the Debtors are going  
2 to go forward with any of what I call the bankruptcy  
3 prepetition relief. We are working on that order  
4 but we just don't have it today.

5 THE COURT: All right. Very good.

6 MR. GALARDI: Your Honor, the next  
7 one on the agenda is matter number 14, which is the  
8 Debtor's motion for utility services procedures.

15 The first change, Your Honor, is we  
16 have spoken about a block account after going back  
17 and forth many times about block accounts, a  
18 separate escrow. Essentially what will happen is  
19 the bank will set up a reserve that we do not have  
20 access to that funds. It just makes it easier like  
21 most reserves. And then if somebody makes the  
22 request that reserve will be subject to the  
23 availability and we will let the Court know of the  
24 availability. That was one of the first  
25 clarifications we wanted to make to the order.

1                           And, in addition, you will see  
2                           the notice of appeal date on the procedure, we are  
3                           trying to work out stipulations with all of those  
4                           parties either by way of paying them, I think we  
5                           have stipulated that this order does not apply to  
6                           them very much like Mr. Johnson. It doesn't apply  
7                           to them so we have with respect to that stipulation  
8                           and there are others that are listed.

9                           In addition, Your Honor, we  
10                          said in our relief we have negotiated, renegotiated  
11                          settlements with most if not all of the utilities.  
12                          I don't think that anyone is still out there that is  
13                          objecting, I have one adjourn that I know of. We  
14                          are evaluating the pay in advance or give them a  
15                          deposit. And then one of things we have talked  
16                          about, Your Honor, one of the things that will  
17                          happen in the next hearing or for the final hearing  
18                          that five million reserve, that two week reserve,  
19                          will be adjusted accordingly since Mr. Johnson  
20                          represents every utility I can think of, that  
21                          reserve will become much smaller. We have resolved  
22                          his objections.

23                          I think then we have resolved  
24                          all of the objections to this motion that the order  
25                          can stand with that one modification to the order

1       that says instead of a block account it would be a  
2       reserve established by the bank. And we would say  
3       this is a final order today. I think we have no  
4       parties contesting or asking for any other adequate  
5       insurance.

6                          The one party is accent energy  
7       that ask that this motion with respect to it be  
8       adjourn over to December 22nd. So we would  
9       essentially carve them out from this, it will not  
10      apply to them as a utility, but the same procedure  
11      would apply to them if we resolve it or contest it  
12      on December 22nd.

13                         THE COURT: Does any other party  
14      wish to be heard with respect to the utility motion?

15                         MR. MATSON: Yes, Your Honor.

16                         THE COURT: Mr. Matson.

17                         MR. MATSON: Good morning, Your Honor,  
18      Bruce Matson again for Bank of America. I don't  
19      think we have any issues at all. We just want to  
20      seek final order. There were some protections in  
21      the first order related to banks but I don't think  
22      it's going to be an issue.

23                         MR. GALARDI: We are working on that  
24      language with Mr. Matson.

25                         THE COURT: So then the motion

1       of Accent Energy will be carried over to the next  
2       date.

3 MR. GALARDI: Yes.

4 THE COURT: Are you going to  
5 be submitting a new order then?

6 MR. GALARDI: I think we will have to  
7 submit an amended, whether we call it final order,  
8 final utility order, but it will have the language  
9 we need to have.

10 THE COURT: All right. The Court  
11 will look for that.

12 MR. GALARDI: Thank you, Your Honor.

24 THE COURT: Very good.

25 MR. GALARDI: The next matter is 16.

1 It is the first day motion with respect to  
2 contractors and satisfaction of liens. Again, we  
3 have agreed the same thing that it will be part of  
4 the Committee's stipulation there will be a  
5 reporting mechanism, a explanation mechanism, that  
6 we are working out language. So this order is  
7 final, separate order between the Committee and the  
8 Debtors.

9 THE COURT: All right. That's approved.

10 MR. GALARDI: Similarly with respect to  
11 number 17 on the agenda, that is the motion of the  
12 debtor to pay certain foreign vendors and service  
13 providers, similar objection by the Committee,  
14 similar response. We will add a stipulation of the  
15 debtor.

16 THE COURT: That will be approved.

17 MR. GALARDI: Your Honor, the  
18 next matter on the agenda is the motion for granting  
19 administrative expenses and postpetition delivery of  
20 goods, the matter of establishing procedures for  
21 reclamation.

22 Your Honor, we received three  
23 objections. One was Warner Home Video; the other  
24 was Alliance Entertainment and then finally  
25 Lumisource filed an objection. I think we have

1 resolved those with all clarification to language  
2 that we can put it in the order to be circulated to  
3 counsel. I don't know if there was any other  
4 objections. I think they have all been resolved by  
5 language we worked out to clarify. We are not  
6 trying to prejudice anybody rights. We are not  
7 trying to limit their rights.

10 MR. ENGLANDER: Good morning, Your  
11 Honor, Brad Englander. Our concern, I think the  
12 language the debtor propose, I think it needs to go  
13 just a step further. I think what the order does is  
14 it picks pieces of the language. What the language  
15 does is pit picks pieces of 546(H). One of the  
16 provisions of this -- I'm sorry. I see now that the  
17 language has been added. Thank you.

18 THE COURT: All right. Very good.

19 MR. CARRIGAN: Daniel Carrigan,  
20 Your Honor, with Bethesda Software, LLC. Your  
21 Honor, we filed a response. Our response went  
22 beyond the issue that has been addressed under  
23 546(H), although that was part of our response  
24 as well. Our response is more global and that the  
25 debtor has now taken the position that reclamation

1 creditors have a general unsecured claim for the  
2 goods and so forth. This is all back to the value  
3 that has been argued throughout the northeast, New  
4 York, Delaware, and else where. And I am not sure  
5 if that is what is before the Court today, although  
6 I am prepared to address it if the Court would like.

10 MR. GALARDI: You are absolutely correct,

11 Your Honor. We have not and I want it to be clear

12 that the reclamation claims, that work with the

13 prepetition security interest, and there is no value

14 -- we are not making that argument. We have not

15 made that argument. We have not made a

16 representation or inclination to make such a

17 representation. What our procedures essentially is

18 that you have the right to go and exercise your

19 reclamation rights as a secured creditor, we are not

20 limiting it.

21 MR. CARRIGAN: With all do respect, Your  
22 Honor, that is not the case.

23 THE COURT: Show me what it is that --

24 MR. CARRIGAN: If Your Honor would  
25 turn to the motion that was filed. The debtors took

1 the paragraph from the previous page. The debtors  
2 submit that the reclamation claims are not entitled  
3 to administrative expense with respect to any of  
4 reclamation claim, but instead are general  
5 nonpriority unsecured claims subject to the debtors  
6 rights to object to such unsecured claims on any  
7 ground the governing law permits.

8 THE COURT: That's in the motion.

9 MR. CARRIGAN: It is in the motion.

16 THE COURT: I have it in front of me.

17 What page is it?

18 MR. CARRIGAN: It doesn't have a page  
19 number, paragraph 13.

20 THE COURT: All right.

21 MR. CARRIGAN: Your Honor, the cases  
22 that are cited, they are all the same. These are  
23 the cases. Obviously the debtor did take in  
24 position these claims are not entitled to any  
25 treatment other than a general unsecured claim.

1 THE COURT: You expected them to  
2 take that --

3 MR. CARRIGAN: I would expect that.

4 THE COURT: But that is not what we are  
5 adjudicating in the motion. All we are doing is  
6 establishing procedure as I understand it.

7 MR. CARRIGAN: But the procedures have  
8 subsitive affect, Your Honor. As Counsel  
9 acknowledged at the original hearing is that the  
10 current 546(B) remedy is strictly returned goods,  
11 and they are being sold even as we speak. So that  
12 when we get 120 days down the road is there going to  
13 be anything to reclaim, the good will all be sold  
14 thorough.

1       sold or as the structure of this motion had before  
2       that the debtor could return goods after 120 days or  
3       at some point without the creditor's consent, which  
4       has been changed and is now clarified. There would  
5       be nothing to get back except that which the debtor  
6       no longer wants, those that are broken, or those  
7       that didn't sell. We are in the peak season. The  
8       goods are being sold through.

9                     By the time we ever get around to a  
10      resolution anything worth having is already going to  
11      be sold. So this procedure motion has subsitive  
12      impact. The debtor also ask in here, I believe, for  
13      clarification that the automatic stay applies here.

14                   Now the citations that are in the  
15      records, the parentheticals that we suggested that  
16      it is only self help. But the breath of the  
17      commentary, or the argument, is that any kind  
18      because what they want or what they say they want,  
19      they don't want distraction in the company.

20                   This goes back to the fundamental  
21      remedy that we have under reclamation. The remedy  
22      of the reclamation is that the notice is given and  
23      what typically would happen outside bankruptcy would  
24      be that the reclamation creditor, reclamation  
25      claimant, whatever the designation, would file a

1       lawsuit to try to obtain reclamation. They would  
2       seek a temporary restraining order requiring them to  
3       recover the goods.

4                          Now during that process and this is all  
5       outline actually in cases that is referenced in this  
6       reply. If the Court would refer to (inaudible),  
7       that case is based on another case, it is based on  
8       an older case called Westwood Bank. What Westwood  
9       Bank said is that were eliminating reclamation is  
10      foreclosure by the secured creditor and use of that  
11      foreclosure sale to pay down a secured debt.

12                         And what the debtor is concerned  
13       about and perhaps justifiably we don't even know how  
14       many total reclamation claims there are in this  
15       case. In Winn Dixie there is plenty. We knew how  
16       many there were. There was a process. There was  
17       disclosure. There was at least you knew what was  
18       going on, what was happening with the reclamation  
19       claim. There is no disclosure provided for here.

20                         The order is issued to the subsitive  
21       rights also has no governing procedures, or  
22       standards, or anything else with respect to when the  
23       debtor will or will not honor a reclamation claim.  
24       There is a provision that they give or sell with a  
25       reclamation -- they can either pay him or give the

1 goods back. Well who monitors that. Who approves  
2 that. How does the reclamation creditors know that  
3 they are being treated the same across the board.

4 We suggested in our response is  
5 a one side fits all program. It is also a situation  
6 that if the debtor really believes that these claims  
7 are valueless under standards, and what those cases  
8 do is they take and proxy a foreclosure and use the  
9 proceeds to pay down the secured debt. The proxy  
10 for that is a quote evaluation, much like under 506,  
11 a secured claim or not a secured claim.

12 So the assumption is that if you  
13 go through every single claim, or every single  
14 reclamation that the lender's lien is always going  
15 to be greater -- pay down the unsecured debt. But  
16 is that realistic. Is that practical. Is that what  
17 happens in the economy. No, it hardly ever happens  
18 today. It only happens like that in liquidation  
19 sales.

20 And that is our concern, Judge.  
21 When we get to the end of this process unless there  
22 is some kind of stay of affect of these procedures  
23 we are not going to know what is happening with  
24 those reclamation creditors. That they could pay  
25 for whatever reason, and not even have to bring it

1 to the Court for disclosure.

2 And, Your Honor, in the other  
3 cases that we and counsel for the Committee and also  
4 for some of the cases in Delaware at least it was a  
5 process where they would have a reclamation report  
6 which would identify all of the claims, which would  
7 identify those that have essentially reduced various  
8 reclamation claims whether it's a notice or what has  
9 happened in most of those cases is you get to the  
10 end of that whole process, you spent a lot of time  
11 and a lot of money evaluate in looking for these  
12 things. Now we are going to go through this  
13 exercise over the next three or three and a half  
14 months and we are going to come to an end and we are  
15 going to have evaluate -- what is the point in  
16 spending the money, the creditors committee are  
17 concerned about, and the vendors are concerned  
18 about, that everybody is concerned about, what is  
19 the point of that exercise. Yes, there needs to be  
20 a process. There is no question about it. And we  
21 suggested a process in our response. But our  
22 concern is that the process, the so called process  
23 is going to affect subsitive rights, and that it  
24 could if it's abused, if manipulated where you go  
25 outside of the rules, and frankly most of the cases

1 today it's not unusual. It has turned the rules up  
2 side down.

3 The Mating (phonetically) case years ago

4 was all about the confirmation of the plan and then  
5 you pay in the order of priority. Well we have  
6 these cases today, these great big cases, is that  
7 almost everybody gets paid at the front end  
8 including for example, with respect to 503(B)9.

9 Those claims have a second priority after the cost  
10 and expenses of administration of Ch. 11 case. Now  
11 the Ch. 11 process and administration is being paid  
12 on an out going basis. And we did not object to the  
13 employee's motion. We do not want the employees to  
14 be adversely affected, nor the former employees. So  
15 we don't have any objections to that. But frankly  
16 they are behind us on the 503(B)9 plan and they are  
17 getting paid. And various taxes are behind us and  
18 are getting paid. And these foreign vendors are  
19 getting paid and they are behind us. And the  
20 vendors who products are generating money for the  
21 debtors operation right now, or at least some of it,  
22 are the ones that are having to stand still and wait  
23 for a period of time and may never get the claims  
24 backs. The debtor comes back in 120 days and say  
25 sorry we don't have that any more, or here is what

1 we have left, you can have it.

6 THE COURT: Isn't that what you have as an  
7 administrative expense claim?

8 MR. CARRIGAN: Your Honor, the 503(B)(9) is  
9 the administrative expense claim, but there is no  
10 time to specify to when it paid. But what it does  
11 say is that it is senior to most of the other  
12 priority claims that are already being paid.

13 And that is the point how can he justify  
14 jumping off the entire train, if you will, of the  
15 absolute priority rule that if you don't pay  
16 prepetition claim, confirmation, when you get off  
17 that rule and it may be a problem with the  
18 legislature more so, because you are here on the  
19 first day and you are here three weeks later and the  
20 answer is that this is the very same situation. The  
21 economy is dreadful. You've got hundreds if not  
22 thousands of people who depend on this company for  
23 their jobs. But let's remember and as pointed out  
24 in the declaration, there are hundreds if not  
25 thousands of vendors who are dependent upon this

1 company. A two million or \$5,000,000.00 account  
2 receivable for these people can be just as dramatic  
3 if unpaid -- have just a dramatic affect upon other  
4 companies.

5 So the trickle down affect, if  
6 you will, described is very much equitable to the  
7 vendors that are out there. And the fact is I don't  
8 think there is any dispute. Although, again, the  
9 debtors haven't told us how many reclamation -- in  
10 Winn Dixie the debtors told us and they estimated  
11 the amounts that would come in and the numbers were  
12 known at some point at least. And you could say  
13 yes, it's a very large number and if the debtor had  
14 to pay all of that money right now, the vendors  
15 understand that. On the other hand -- it's one  
16 thing that they understand it and is working with  
17 the debtor, it's a whole different thing to say as  
18 time goes by we will work with you, but trust us.  
19 And then at the end the goods are all gone.

20 There has been too many cases, and if I  
21 remember the numbers correctly and Counsel can  
22 correct me, there are hundreds of millions  
23 reclamation claims made, and of course those are not  
24 all valid. But that number is going to come down  
25 because they are just overstated. But there are

1       hundreds of millions claims made. In Flemming I can  
2       say that when we got to the final numbers that came  
3       out of the debtor's reclamation point, it had gone  
4       from hundreds of millions down to about a twenty  
5       million, and part of that was because the stuff has  
6       been sold through. And it wasn't there any more and  
7       we couldn't claim it. And because there was no say  
8       in the process the argument was that what was a  
9       couple hundred of million dollars is now a twenty  
10      million claim, and by the way that was valueless  
11      because the value of the inventory was not greater  
12      than the amount of the secured debt. We are not  
13      fighting with the secured creditors here. We are  
14      not really trying to fight the debtors. What we are  
15      saying is don't limit our rights under the  
16      procedures.

17                     THE COURT: All right.

18                     MR. CARRIGAN: Thank you, Your Honor.

19                     MR. GALARDI: Your Honor, I never had a  
20      procedure objected to like this, so I would do what  
21      I did with the utilities, I would carve him out  
22      because these procedures do not apply to him.

23                     MR. CARRIGAN: Your Honor, we did  
24      not ask to be carved out. We asked for a fair and  
25      equitable procedure. If Counsel wishes to

1       carve us out then Counsel should give us a  
2       fair and equitable procedure. If Counsel  
3       does not wish to do that then the Court  
4       will really have to rule up or down on it.

5 THE COURT: You are not  
6 bound by the procedures under procedural  
7 order then you have all of the rights that  
8 you had coming in and nothing has been  
9 compromised today and you can proceed by  
10 motion or whatever you want this Court to  
11 grant you.

12 MR. CARRIGAN: Your Honor,  
13 superficially I would say that is right. But  
14 as a practical matter what is going to happen, our  
15 client has a three and half million dollar claim.  
16 And, again, Your Honor, we didn't ask to be carved  
17 out, what we say to the Court is the problem with  
18 this order is it's unfair. It has a subsitive  
19 impact and --

20 THE COURT: But if it's not  
21 impacting you how --

22 MR. CARRIGAN: It does impact us,  
23 Your Honor.

24 THE COURT: You are not a part of it.  
25 MR. CARRIGAN: Your Honor, this

1 would be like if the debtor came to you and said we  
2 have a motion that we are going to apply to a whole  
3 class of creditors except this one. Now that is  
4 obviously discriminatory.

5 THE COURT: I don't understand.

6 If you want to be excepted from the order then you  
7 can, if you want to be a part of the order you can.  
8 So it's not discriminatory. You can pick which way  
9 you want to go.

10 MR. CARRIGAN: It's not quite the  
11 picking, Your Honor. And, frankly, let's examine  
12 what would happen if we were on our own. If we were  
13 on our own then we would have the right to go in and  
14 file a reclamation claim with this Court. We would  
15 then have to go through the preliminary injunction  
16 and the process. And then the bank for three  
17 million or two million, or whatever is left, they  
18 could foreclose upon us and use the money to pay  
19 down. While every hundred perhaps, or how many  
20 other reclamations are out there are going to be  
21 sitting there and hoping that one day the debtor --  
22 we are at a loss if we are all by ourselves in this.  
23 I mean that is the answer to this.

24 The debtors asked for a one side  
25 fits all solution. Our response was yes, a one side

1       fits all make sense, but it needs these kind of  
2       modifications. If we are not going to consent the  
3       carve out. And we were very careful in our motion  
4       to ask for not to be carved out, what we asked for  
5       was a fair process. If the fair process is not  
6       going to be afforded or what do we view as a fair  
7       process, or the Court can decide it is a fair  
8       process. And if they do the Court can impose it on  
9       us and we certainly will obey the Court's order.

10                   But the carve out is not a realistic --  
11                   again, Your Honor, frankly the debtor filed this  
12                   motion and they asked for relief under 546(H). And  
13                   it included all of the elements under 546(H) subject  
14                   to the rights of the secured creditors and subject  
15                   to a lot of other things but they left out the  
16                   consent of the affected creditor.

17                   Now what were they going to do when it  
18                   comes back later. Were they going to say that  
19                   anybody that didn't object to this motion has  
20                   consented so they get their goods back when ever  
21                   they get them back and whatever they are. That's  
22                   the danger of these things is that this process  
23                   offers the opportunity for the debtors, and not even  
24                   having to disclosure to anybody.

25                   And, frankly, Your Honor, no,

1       we will not consent to being carved out. If the  
2       Court carves us out, the Court carves us out. If  
3       the Court overrules our objection, the Court  
4       overrules our objection.

5                     But our problem is the debtor  
6       wanted one size fits all process. It is not only a  
7       process it is also a subsitive affect. And we  
8       suggested a process that has proven out, it has  
9       worked in other cases that would be applicable to  
10      all. If the Court chooses to disregard that, or  
11      rule that it is inappropriate or unfair, we respect  
12      that and we want the Court's judgement.

13                     Thank you.

14                     THE COURT: Mr. Galardi.

15                     MR. GALARDI: Your Honor, with  
16       respect to the process, I think, Your Honor, in  
17       reading through the brief again, I find the process  
18       some what -- the reclamation claims are secured  
19       creditors under the modification of the code. They  
20       have secured creditors rights that can be asserted  
21       and they have the rights in pursuing those. What we  
22       found, Your Honor, in dealing with all of those  
23       protective orders, and then we are going to first  
24       day motions to try to avoid being in Court every few  
25       days. I understand at the end of the day you are

1        selling goods. And why we draft the procedure the  
2        way we do and why we are very clear, if they are not  
3        comfortable with these procedures, then you are  
4        entitled to file a lawsuit, a request for a stay, a  
5        temporary injunction, because we do understand.  
6        This is just like outside of bankruptcy, every day  
7        those goods get sold their reclamation claims may  
8        become less. They can protect their rights. This  
9        was a mechanism to give us notice so we can have  
10      conversation.

11                  But if people are concerned about  
12                  that then we can carve them out  
13                  of the motion, or the motion in  
14                  particular, they are filing an  
15                  action getting a preliminary  
16                  injunction and getting their  
17                  goods. So in that context, our  
18                  brief is actually helping  
19                  creditors understand that they  
20                  have rights now as secured  
21                  creditors. They can optimize  
22                  the procedures and know the  
23                  risk. But if you don't want to  
24                  be in a procedure, here is what  
25                  the code says, and by the way

1 the procedure doesn't preclude  
2 you from doing what the code  
3 says, or what lawyers do, namely  
4 file a complaint. Whether he  
5 wants to be in or out, what the  
6 consequences of saying if you  
7 are not happy then you should  
8 come in and protect your rights.

21 THE COURT: The Court is going  
22 to overrule the objection. I will approve the  
23 procedures, and if the creditor wants to opt out of  
24 the order, he may.

25 MR. GALARDI: Thank you, Your Honor.

I am very hopeful to say that we have resolved all but one objection. I think we have resolved these objections. I think this goes to number 19, number 20, and I believe there is one other one. I am going to say some things that what I think we have agreed too. I am sure there are plenty of landlord counsels behind us, behind me that may come up. This is also with the effort and the suggestion of the Committee, who has two very large landlords that have many leases.

24 Your Honor, I think I explained in the  
25 first day we have what we call the surplus leases

1       that were already rejected but under rejection  
2       motion. We have been going forward the leases that  
3       are store closing leases so we are concerned about  
4       whether December and how the accrual method works.  
5       We have the stores that we have no intention to  
6       leave at this particular time. And among those  
7       stores some are paid in advance, but unfortunately  
8       some are paid in arrears. So there is an objection  
9       out there today that somebody would be paid rent on  
10      November 30th, but it would go back to November 1st.  
11      So we have agreed that regardless of the way your  
12      lease works, if you have objected we would apply the  
13      accrual method with respect to you.

14                  Any landlord who is not an objecting  
15      party we will not agree to that. We will reserve  
16      our rights to argue otherwise. We understand that  
17      the circuit may have the accrual method, but we will  
18      reserve our rights to say otherwise to do whatever  
19      we need to do. But we are with respect to any  
20      objecting landlord in the room we are agreeing the  
21      accrual method applies. It applies not only to  
22      those who pay in advance but also -- for example,  
23      there is one landlord in here that has a November  
24      30th payment that would go back. They agreed I  
25      don't have to go back all the way to November 1st.

1 I am only going back to November 10th and paying  
2 that rent. And to stay consistent with 365(B)3, we  
3 are going to actually take up one of the accruals we  
4 will pay. That was one of the many points that we  
5 did.

6 Your Honor, the second part of  
7 this 365(B), we also agree with the landlords that  
8 we needed a 365(B)4 extension for the reasons set  
9 forth in the record on the first day. We have  
10 agreed with the landlords. I think we have resolved  
11 every objection in 365(B)4 motion. But to make  
12 clear there are carve outs to that 365(B)4 and again  
13 we didn't realize the carve outs when we made them.

14 In particular, if you were what  
15 we call the (inaudible) leases we didn't have the  
16 inventory, this motion does not apply to you. You  
17 are carved out. So I still have my 120 days with my  
18 rights to ask for an additional 90 days. If you  
19 were a GOB store because we are liquidating  
20 inventory in those stores. We are going at a store  
21 closing store, we are not going out of business. If  
22 you are in one of those since we liquidate the  
23 inventory, again we are not exceeding the 364(B)4  
24 extension. What came to my attention and the banks  
25 have agreed too. There were some leases that were

1       in a construction phrase. Obviously we didn't have  
2       inventory, but we didn't know and there extensions,  
3       we are not seeking an extension with the  
4       inconstruction, again, the lenders are concerned  
5       about the liquidation of the inventory.

6                          Your Honor, we agreed that we would  
7       again, and I understand this is an issue in this  
8       jurisdiction in particular which I have learned this  
9       morning, there is an issue of timely obligation in  
10      the accrual of stub rent. Landlords are very  
11      concerned about the stub rent, and if we don't pay  
12      the stub rent right now there will be consequences.  
13      We have agreed to at least for this purpose and  
14      there are reasons, business reasons, we have been  
15      working with the Committee, any of the requests to  
16      have immediate payment of stub rent, whether that is  
17      in the form of a motion, or in the form of an  
18      objection, or in the form of an objection from the  
19      365(B)4, we are saying you don't need to make a  
20      motion. If you have already done it, and all such  
21      objections are going to be adjourn over to December  
22      22nd. With that said because of the accrual method  
23      we will agree that they are administrative claims,  
24      and we are really talking about the timing of the  
25      payments of those. I guess the concern is here that

1 if they delay the payment on it we would ask Your  
2 Honor to enter an order to protect them from the  
3 delay of any payments right now at least.

4 My understanding is if they  
5 receive an order tomorrow and this is today saying  
6 immediately pay it they are out of that  
7 disgorgement, the dissolution issue, so they were  
8 very concerned about that and that is what prompted  
9 a number of motions and reactions.

10 We have agreed that, if Your Honor  
11 agrees, to help get us to that December 22nd date to  
12 not fight the issue of the timing of that thing is  
13 and that hopefully get beyond that and to not fight  
14 issue, at least from now until December 22nd, the  
15 facts that they have delayed, not delay, we asked  
16 for a delay, the fact that we are not paying it now  
17 should not subject them to dissolution or  
18 disgorgement or anything else and we come back on  
19 the December 22nd to discuss the issue.

20 In addition, Your Honor, as I've  
21 told the landlords, with respect to stub rent, Your  
22 Honor, we have two types of leases now. We have the  
23 leases that the stores are liquidating during --  
24 under the agency agreement although they are not  
25 third party beneficiaries of that agreement we have

1       agreed to pay because we are being paid by the  
2       agent, we have agreed to pay that rent. Again if  
3       you live by the accrual method you are going to die  
4       by the accrual method so that means and they all  
5       agreed that if we stay on through mid-December that  
6       having pay December 1st rent, we will have rent and  
7       we can actually vacate the premises, and we are  
8       working on what that means, then we only pay for the  
9       two weeks so the landlords are agreeing to that sort  
10      of method.

11                   I think and I know I jumped around  
12          because I got to go back to the objection motion,  
13          but it all goes as one big piece. Those were the  
14          major concerns that resolved the 365(B)4. Your  
15          Honor, our motion may read incorrectly, so I want to  
16          be clear on the record. If we will have to actually  
17          assume or actually reject by the earlier of the  
18          confirmation date or the 210 date, not that we would  
19          file motion on that date to extend that time period.  
20          Now with respect to confirmation we would have to  
21          make a notice that we are assuming confirmation, but  
22          as normal we would not have those go affective until  
23          the affective date and they agreed to that. But we  
24          can't change and play games with the confirmation  
25          and the affective date to say ha, ha, we assumed it

1 and now are rejecting it. So I think that was  
2 another issue that they had that we have resolved.  
3 Your Honor, the other things that  
4 we have resolved with respect to some of the  
5 properties is, and I will wait until they come up,  
6 there were a number of people that objected to the  
7 rejection. And the issue comes down to a number of  
8 issues. This is where I think there is one  
9 outstanding objection. We have two problems and  
10 most of it comes from did we give the keys back, did  
11 we surrender the premises. We have a witness who  
12 would be available to testify of that. What I  
13 thought we would do in that case is argue that  
14 everybody rights are reserved. If you raised the  
15 objection that the affective date of our rejection  
16 or we didn't surrender the premises for whatever  
17 reason, it was not November 9th, or November 12th,  
18 or November 19th, or whatever, as long as you agree  
19 that it was by November 30th, so we put a perimeter  
20 around that date and all rights are reserved and  
21 argued whether there was an affective surrender or  
22 not, then we have agreed to that. We are not going  
23 to put on evidence today of that. We will try to  
24 resolve that. And, again, that would be a stub rent  
25 claim, if we were wrong and it was not of the

1 affective date and we have our position, they have  
2 theirs and then we will talk about if it's two days,  
3 three days, four days stub rent. But it will be  
4 treated like all of the other stub rent claims  
5 without the subject of dissolution on those issues.  
6 I think that is resolved. I will find out when I  
7 leave the podium of that.

25 Your Honor, then we have the unfortunate

1       circumstances for them, perhaps fortunate for us, is  
2       that some of the sublessee pay rent for the month of  
3       November on the 1st and we didn't pay rent to the  
4       landlord. Since we have money prepetition put into  
5       our accounts, we told them we were unfortunately  
6       unable to pay that money back. So we agreed that if  
7       they want to come in and argue that point we can do  
8       that with Your Honor. We can't without an order of  
9       the Court say by the way you got sublessee you get  
10      back the money. That is something that the Court  
11      will just have to decide. We would oppose it.  
12      Landlords are free to argue that. We are not  
13      resolving that today.

14                     But as a compromise on the other  
15      side, some landlords did in fact make the December  
16      payment. But we didn't pay December rent because we  
17      thought they were rejected. What we told the  
18      landlords was we are not going to try to make in the  
19      postpetition period. That's just an accounting  
20      problem. We would if we got it, give the money to  
21      the landlords, back to the tenants pending upon the  
22      circumstances. That is what they want. Again,  
23      there is one landlord that may say we took it and we  
24      got the rent. Everybody else has agreed with that  
25      provision.

1                   We then got to the fifth  
2       procedures, Your Honor, and again, I think we got  
3       pretty far on all of these and then I will leave the  
4       podium to the landlord counsels. There was a  
5       concern about notifications with respect to this  
6       procedure adequate insurances, and I'm hoping that  
7       we settled these in this environment. But as a  
8       precaution what we have agreed to do, and I think  
9       there is a December 17th date by which we would have  
10      to give notification to the parties as to the  
11      bidders of the properties for adequate insurance  
12      information. We would by Friday noon post on the  
13      website and hopefully send out to the landlords, if  
14      there is a bid on their property we would notify  
15      them of the potential bidder. And I think the  
16      hearing is December 22nd, so the ideal is give them  
17      notices back.

18                   We would modify the bid requirements of  
19      anyone who wants to bid on them. So if we don't get  
20      a bid we are going to give that five days notice of  
21      the date of rejection. But the rejection would be  
22      affective again this goes to what constitutes  
23      surrender, we would give notice, you get five days  
24      notice to turn over or shut off the alarm code. And  
25      I said we would make reasonable efforts to give them

1       the alarm code and turn over the keys and to  
2       deactivate the system if we are not going to be  
3       there.

4                             And with respect to third parties  
5       we would try to -- they were concerned about the  
6       property. We are aware of perhaps the collateral of  
7       the banks. What we would do is try to give notice  
8       and we will do the best that we can to all third  
9       parties that we believe have property in there. And  
10      the same five days notice saying take it or it will  
11      be given to the landlords free and clear so they  
12      don't have a liability should they get it, should  
13      they throw it out, or should they sale it.

14                             We also agreed, Your Honor, that it is  
15      really not appropriate until the actual sale of the  
16      property, if the period of time that the order may  
17      become immedately affective. That would be  
18      December 22nd if we are in the position to that.

19                             Finally, Your Honor, I think on December  
20      22nd what we have agreed to is we would only go  
21      forward on the uncontested sales of leases, and if  
22      there is a contestant matter with respect to the  
23      sales of the leases and the parties couldn't agree  
24      to go forward on December 22nd, we would come up  
25      with some hearing, Your Honor. If we need to do it

1 before the year end, we would ask for time for that.  
2 But at least we will agree temporarily not to try to  
3 force if the parties are not prepared to go forward  
4 on December 22nd, given that date, it's the 17th and  
5 18th becomes the weekend and then we are back here  
6 so we would agree to that.

7 Let me test my memory and see if  
8 there is anything else. Now my understanding, Your  
9 Honor, with respect to all of the parties other than  
10 I think two parties, one of the sublease and the  
11 rejection, one trying to determine by putting off  
12 motion to compel could be done on December 22nd. I  
13 actually think that resolved all of the objections  
14 to the rejection motion, which was number 19. It  
15 resolves a lot of objections to 20 as well Your  
16 Honor. It resolves all of the objections with  
17 respect to the motion listed on 21, which is the  
18 extension of the 365(B)4. I think we should  
19 probably stop there and let the counsels go. I will  
20 go back to this, motion 20, which is the agency is  
21 resolved by I believe most -- I see Mr. Branch  
22 coming up -- but in addition, Your Honor, we want to  
23 make clear in a modified order, as Your Honor is  
24 probably familiar the agent has been dealing with  
25 landlords on all of those issues. We want to make

1 clear that the agent could landlords that are  
2 enforceable. We want to make sure that the agents  
3 have the authority to do so, that those letter  
4 agreements could be approved and finally that the  
5 sale of the would be free and clear of all those  
6 claims and encumbrances. Again, the bank group had  
7 agreed to the original motion to do that. If there  
8 is an issue with the bank group, that we would in  
9 fact make sure that is possible on that aspect.

10 Your Honor, I may have missed some  
11 parts of my script before they all come up and  
12 speak.

13 THE COURT: Let me ask you this  
14 question, please. Should we plan a lunch break?  
15 Would it make sense to talk a little bit with the  
16 landlords to see if there was something not put on  
17 the record because it sounds like to me that you  
18 made tremendous progress this morning in just one  
19 hour. Does it make sense for us to take a break or  
20 do you want to push through?

21 MR. GALARDI: Your Honor, I think  
22 we should take a break. I'm not sure that there are  
23 many other matters. But it may be worth it to take  
24 a break. Let me go through this, 22 is a motion to  
25 compel rent. And 23 is the same, 24 is the same, 25

1 is the same. Your Honor, has already disposed of  
2 26. And 27 is again a motion to compel rents. And  
3 28, Your Honor, is to the supplemental sales use.  
4 Your Honor, I believe with one change to number 29,  
5 that is also resolved. The landlords have asked for  
6 clarification on that as well. It's the later of,  
7 they don't have to file a general bar date. It is  
8 the date by which it's 30 days after rejection, what  
9 ever is the later of those two. So they don't have  
10 to put in all of their prepetition damage claims.  
11 There is an outstanding objection. We are agreeing  
12 with the agency governing 180 days. That takes us  
13 to number 30, I believe, that will be a matter we  
14 will be hopefully resolving. Number 31, Your Honor,  
15 is already handled. And 32 would be addressed and  
16 33. So I do think a break at this point might clean  
17 the whole agenda except for maybe a couple  
18 objections.

19 THE COURT: All right. We will go ahead  
20 and do that.

21 How long do you want to take a break?  
22 MR. CURLY: Paul Curly, I want to  
23 introduce the Court to Mr. Cunningham. I have an  
24 obligation this afternoon and I was going to ask Mr.  
25 Cunningham to be able to appear without me being

1 present.

2 THE COURT: Certainly. That will be  
3 granted.

4 How long do you want to break for?

5 MR. GALARDI: Your Honor, if you want  
6 to take a lunch break now, it's 1:00. Would 2:00  
7 give everybody enough time. I think a break until  
8 2:00 and we can work the language out and that will  
9 give your staff time to have lunch and we can finish  
10 this up.

11 THE COURT: We will stand adjourn until  
12 2:00.

13

14 (A lunch recess was taken.)

15

16 THE COURT: I see everyone is back.

17 MR. GALARDI: Your Honor, there is a  
18 gentleman here that is not on the agenda, who  
19 represents the monitor in Canada. I think we should  
20 take that one first before we go back on the docket.

21 THE COURT: Who in Canada?

22 MR. GALARDI: As you know we filed a CCWA  
23 proceeding.

24 THE COURT: Yes, sir.

25 MR. GALARDI: And he would like

1 to say a few words to the Court.

2 THE COURT: All right.

3 MR. GALARDI: Thank you.

4 MR. SMITH: Good afternoon, Your Honor.

5 Thank you for hearing us. J.R. Smith from Hutton &

6 Williams. With me today is Mr. Ken Coleman. I

7 would ask you if he may be heard today.

8 THE COURT: Yes, sir.

9 MR. COLEMAN: Thank you, Your Honor.

10 I will be very brief. Those proceedings

11 are commenced in Canada that these Ch. 11 cases were

12 commenced. We represent the monitor who was

13 appointed in that proceeding. As Your Honor may be

14 aware the appointment of a monitor is required on

15 the statute. There is a great deal of attention

16 being paid in the Canadian proceedings. Very

17 briefly, I just wanted to outline a couple of points

18 to the Court. One is the monitor's role in the

19 Canadian proceeding. The monitor is an officer of

20 the Court. He is not a party to the proceeding. He

21 is independent, neutral, and intended to assist the

22 company and the creditors to achieve a

23 restructuring.

24 One of the functions of the monitor

25 is to file periodic reports that is the principal

1 means of the communication of the Court to appoint  
2 the monitor and the principal means of  
3 communications between the creditors,  
4 constringencies in the proceedings. We have done a  
5 fair amount of work representing monitors in the US  
6 cases. And some Courts have found it helpful to  
7 receive copies of those reports to be filed into the  
8 US proceeding. We are happy to do that here if Your  
9 Honor thinks that would be of interest or somehow  
10 informative. We are happy to proceed on that basis  
11 if you think that would be helpful to the court.

12 Later today, I think in about an hour's  
13 time there is a hearing to approve a sale process  
14 and that is designed to be a duel process, Your  
15 Honor, a stand alone process for sales or in  
16 conjunction with a larger transaction made. That  
17 process in Canada is on a pretty fast track.  
18 Proposals, current proposals are due by the 15th of  
19 January. And it is intended or at least proposed in  
20 the order that will be submitted today that the  
21 monitor have full participation in that process in  
22 Canada. That transaction if it goes forward would  
23 require approval by the Court and depending on the  
24 other aspects of the deal particularly if there are  
25 some US elements to it, there may be a need for

1 coordination and cooperation between this Court and  
2 the Canadian Court. It may be useful in that regard  
3 for the two courts to have communication. And we  
4 would make available to your chambers the contact  
5 information if Your Honor would feel that it is  
6 appropriate to communicate.

7 Just very briefly, Your Honor, the other  
8 two items up for today in Canada are extension of  
9 the stay, proposals to extend that out to January  
10 30th and as well to make certain modifications to  
11 the initial order that was granted on the first day.

12 Your Honor, if you think it would be  
13 helpful to this Court we can file those pleadings  
14 and those orders along with the reports as you wish,  
15 and provide as much or as little information as Your  
16 Honor would desire to see. Those are my comments.

17 Thank you very much.

18 THE COURT: Thank you very much.

19 Mr. Galardi, do you think those would be  
20 helpful to have the reports or any of those  
21 pleadings filed in connection with this case?

22 MR. GALARDI: Your Honor, I have know  
23 objection if you have an interest to do that.

24 THE COURT: I don't know if we need  
25 to have the pleadings filed.

1 MR. GALARDI: Your Honor, we have been  
2 involved with the monitor. We have discussed the  
3 process and how it coincides with the process here  
4 in the United States. We had a meeting already with  
5 the monitor. I think having the monthly reports  
6 that they do is a good ideal. If there is some  
7 pleading that they thought is really important they  
8 could always file it. The reports might be a good  
9 ideal to get.

10 THE COURT: Very good.

11 MR. COLEMAN: Thank you, Your Honor.

12 MR. GALARDI: I do believe we have  
13 resolved the landlord type motions and all of the  
14 issues. I would turn to matter 19. Matter 19 is  
15 the motion of us to reject leases and to abandon  
16 property. I guess I missed a couple of things that  
17 I would like to put on the record with respect to  
18 this that I think finalizes it.

19 There are three objections, Golf Galaxy,  
20 Dick's Sporting Goods, and Dollar Tree. We have  
21 agreed to adjourn their objections to rejection over  
22 to the January 29th date.

23 THE COURT: Those are Golf Galaxy, Dick's  
24 Sporting Goods, and Dollar Tree?

25 MR. GALARDI: Yes, Your Honor.

1                   There are also agreements  
2                   between landlords and subtenants that we are going  
3                   to have side deals where there will be assumptions  
4                   and assignments as opposed to a challenge of  
5                   business judgement, where we had at least made it  
6                   neutral, I believe, with landlords. One would be  
7                   Cardinal Distribution would be the landlord and GEI  
8                   is the subtenant doing business as CP Transportation  
9                   Systems. The second would be OLP6609 Grand LLC with  
10                  Lazy Boy as the subtenant. And then I have, I think  
11                  it's Ban CCIWR Business Trust with DHL. So we would  
12                  seek to have those agreements. Your Honor, with  
13                  respect to the actual date of rejection as well as  
14                  you have seen a lot of landlords say we have  
15                  banished the property especially with types of  
16                  claims they may have in addition to stub rent, all  
17                  rents are reserved. We are not trying to say that  
18                  there is not an administrative claim. We are not  
19                  saying that there is. We are just reserving all  
20                  rights for people to make any claims they want out  
21                  of this including a claim for stub rent and  
22                  contesting whether we actually are entitled to the  
23                  date of rejection. If I'm not mistaken that  
24                  resolves all of the objections.

25                   THE COURT: Thank you.

1                   Does anybody wish to be heard in  
2 connection with the motion authorizing rejection of  
3 an expired lease?

4                   MR. LESTERMAN: Robbie Lesterma.  
5 Your Honor we filed a joinder in the objection of  
6 Dick's Sporting Goods.

7                   THE COURT: Right.

8                   MR. LESTERMAN: We filed it last  
9 yesterday evening. The objection is docket number  
10 275, I believe. And I just want to make it clear  
11 that we just simply join in that objection. We are  
12 the primary landlord with respect to that lease and  
13 so we have no problem with carrying that objection  
14 or joiner over to the 29th.

15                  THE COURT: Thank you.

16                  MR. LESTERMAN: Thank you.

17                  MR. GALARDI: Your Honor, there is one  
18 lease that we have not moved to reject, or didn't  
19 apparently have it on our sublease rejection, that  
20 we agreed with Counsel that we would do.

21                  MR. CUNNINGHAM: For the record, Your  
22 Honor, Gary Cunningham appearing on behalf of the  
23 landlord in Detroit, the service center for Circuit  
24 City in that geographic location. There is a  
25 subtenant, apparently a subtenant lease that we

1 weren't party too. They have not received any  
2 notification of what is happening here in this Ch.  
3 11 proceeding. Counsel for the debtor and I have  
4 agreed that that needs to be resolved as well. And  
5 I believe debtor will take all of the steps  
6 necessary in order to get notice in file a motion in  
7 order to reject that sublessee.

10 MR. CUNNINGHAM: And we also agreed,  
11 Your Honor, as other landlords have on the proration  
12 method being the law of the case here. The only  
13 other issue we have is our damage claims and we  
14 agreed that we will preserve those as the same as  
15 the debtor. And I think that resolves everything.

16 THE COURT: Very good.

19 MR. CUNNINGHAM: We did, Your Honor,  
20 docket number 260. I'm not certain what the letters  
21 were. The original one was 260.

22 THE COURT: That's sufficient. Thank  
23 you.

24 MR. CUNNINGHAM: Thank you, Your Honor.  
25 MR. GALARDI: Your Honor, the other

1 one is there is an objection, I think it's docket  
2 number 368, Home Family Trust, we have reached an  
3 agreement with Counsel.

4 I think that resolves all of the  
5 objections on number 19. What we intend to do is  
6 work on an order and we will circulate an order on  
7 Monday morning, circulating to the parties so that  
8 they can review it to make sure I've gotten  
9 everything.

10 THE COURT: So do you anticipate  
11 there will be one order for every landlord, or are  
12 you going to circulate separate orders for each of  
13 the landlords who have objected?

14 MR. GALARDI: Good question. I  
15 think what we will do is resolving their objections,  
16 Your Honor, because remember this was a motion to  
17 reject, they objected to that. So we will circulate  
18 it to them. And if they need a separate order then  
19 we will do a separate order trying to get on record  
20 any agreements, if necessary, if they are  
21 comfortable with my representations. They can  
22 contact us if they want an order for that.

23 THE COURT: All right. Very good.

24 MR. GALARDI: Your Honor, may I have  
25 permission that if we don't need to file an order

1 but we have an agreement by email or other way that  
2 that will be sufficient instead of filing an order  
3 or stipulation, if landlords are comfortable with  
4 that.

5 THE COURT: That is fine with the  
6 Court.

7 MR. GALARDI: Thank you, Your Honor.

8 Your Honor, as I move to matter 20, I  
9 believe that this is the motion with respect to the  
10 Gordon Brothers. Your Honor, I neglected to say --  
11 I mentioned that there was (inaudible) Company that  
12 was being sold. Your Honor we amended the agreement  
13 with respect to sale. What had happened was we  
14 decided to go away from Gordon Brothers and thought  
15 we had a better deal and it was our only option to  
16 do so. Then once we received the better deal we  
17 then circulated that deal and Gordon Brothers made  
18 the higher proposal, which is reflected in the  
19 letter of agreement. We shared that letter with the  
20 creditors committee. I wanted to bring that to the  
21 Court's attention so we ask for approval to proceed  
22 that way.

1 appear at the auctions whether they bid or not.  
2 Second is that landlords will be entitled to credit  
3 bid, we have the right to contest whether it's a  
4 valid amount. And those credits will include both  
5 prepetition and postpetition accrual again with  
6 respect to the landlord's bidding.

7 In addition, the landlords if bidding on  
8 their own lease would not have to make a good faith  
9 deposit on their own lease. It is their own lease.  
10 Obviously if they go on any other lease they get  
11 treated like any other bidder.

12 I may have misspoken that the adequate  
13 insurance information be transmitted is actually  
14 December 16th. And then I have the obligation by  
15 December 19th at noon put on the record where these  
16 properties have gone. And I'm loosing my notes on  
17 the December 17th date. Secured objection deadline,  
18 which I didn't refer too. Apparently there is a  
19 shorter period with our modifying this order, that  
20 will be modified over the weekend. It's already a  
21 deadline, but we are essentially extending the  
22 deadline for persons to make objections. It will  
23 give the landlords more time to make the  
24 calculations and make the objections. And then any  
25 amounts if we do sell the properties and we have an

1 agreement, or to the extent we have an agreement, we  
2 would pay up the amount and we are not going to hold  
3 the landlords hostage to the full amount being  
4 resolved unless there is such a gigantic difference  
5 that we can't agree. But I can't imagine that will  
6 be the case. We will pay the uncontested amounts at  
7 that point and then we can resolve any other  
8 additional amounts at a later point. I believe that  
9 there resolves all of the objections to number 20.  
10 And on this one what we were doing and Counsels to  
11 the landlords have been very helpful here, we have  
12 modified the order to reflect all of my comments,  
13 the additional comments. The ideal would be to  
14 circulate this order to the objecting parties. We  
15 ask if they don't have their emails on something we  
16 already have to give us their emails to circulate  
17 that order on Monday morning and then to get all  
18 comments around noon or 1:00, and then try to  
19 circulate and file that order for Your Honor by the  
20 end of the day, Monday. It may split to Tuesday.  
21 We will be sure to get these deadlines out there.

THE COURT: All right. Very good.

23                                  Does any party wish to be heard with  
24 connection of this motion?

25 MR. FEINSTEIN: Robert Feinstein

1 with the creditors committee, we just ask even  
2 though we didn't object to this that we be included  
3 in all of these orders being circulated.

4 THE COURT: I would assume you  
5 would be included or at least that would be my hope.

6 MR. GALARDI: Yes, sir.

7 Your Honor, I think on the hearing  
8 we have the whole day scheduled for the 22nd.

9 THE COURT: You do.

10 MR. GALARDI: What I would suggest  
11 is that at least this matter be scheduled for the  
12 afternoon. If we have a big enough calender we can  
13 deal with other things in the morning. But at least  
14 this matter be scheduled for the afternoon if that  
15 is acceptable. And maybe we can resolve some  
16 objections on some other matters if that is  
17 acceptable.

18 THE COURT: That is acceptable.

19 So we will set this matter down for 1:00.

20 MR. GALARDI: That will be great,  
21 Your Honor. Thank you.

22 Your Honor, now we turn to matter  
23 21 on the agenda, which is the debtor's motion to  
24 extend time under 365(d)4. As I earlier mentioned,  
25 Your Honor, we would be extending the time but it

would all be for the 210 days that would have to be done to assume or reject it. Clarification on the record, Your Honor, we put in the order a paragraph that provides that we will satisfy our client's obligation that is required by 365(d)4. And then the way that we worked out a procedure is that landlords, if they believe we have not done so, they will give us five days notice. We will have five days to either fix it or we agree to have to come back to the Court on an expedited basis. I think that resolves all of the objections with respect to -- and the other things I said earlier with respect to the 365(d)4. I think that is the thing that I missed earlier.

15 THE COURT: All right. Very good.

16 Does any party wish to be heard in  
17 connection with the motion to extend time in which  
18 the debtor may assume or reject leases?

19 MR. EPPS: Good afternoon, Your  
20 Honor, H.C. Epps, Jr. on behalf of many of the  
21 objecting landlords. I asked Mr. Galardi and he has  
22 given me permission to clarify something that he  
23 said earlier about the timing. Our group of  
24 landlords and another of others have objected to the  
25 payments and stub rent for any period of time based

1 on the language, would have get paid in a timely  
2 matter in order to avoid be put into the general  
3 administrative expense claims pocket only paid at  
4 the end of the case. We had agreed as to the  
5 landlords, the payments is considered to be made as  
6 of today whether or not it's heard at some other day  
7 and that issue will not be raised as to us, the fact  
8 that we were not here on a timely basis, that was  
9 spoken before lunch but I want to clarify that was  
10 what we worried about and we do have an agreement on  
11 the issue.

12 THE COURT: Very good.

13 MR. EPPS: Thank you.

14 THE COURT: Thank you.

15 MR. MCCULLAGH: Good afternoon, Your  
16 Honor, Neil McCullagh. I have filed a motion to be  
17 here today. I would allow Mr. Wood to address the  
18 Court on this.

19 THE COURT: Mr. Wood.

20 MR. WOOD: Thank you, Your Honor.

21 Your Honor, our lease is one of  
22 the under construction leases, no inventory, it  
23 originally was on the extension list and now  
24 it's been taken off and we appreciate that. The  
25 debtor, as Counsel said, the current date now wi

1       be March 10th as the drop dead date for  
2       assuming or rejecting and we realize that  
3       and the debtors has reserved its right to extend  
4       that time. We realize that.

5                          But we just want the record  
6       to be clear that we are reserving all rights  
7       to seek a shorter period, but we will reserve  
8       our rights to do so. We have about approximately  
9       \$736,000.00 contract on the particular lease  
10      and under California law they have a time limit  
11      in which they can affect that. And some of  
12      those time limits are going to be coming due.  
13      Certainly they will be coming due before  
14      March 10th. Some of them will be coming due this  
15      month. We already had one. We actually had two  
16      filed and we anticipate a lot more. The parties are  
17      working on the termination agreement and I hope that  
18      the parties will be able to resolve this, but if not  
19      we may be back as soon as December 22nd telling you  
20      that if this needs to be compelled -- I didn't want  
21      the Court to be surprised by that so we are  
22      reserving our rights to do that.

23                          THE COURT: Thank you.

24                          MR. WOOD: Thank you.

25                          MR. CREMSHAW: Good afternoon,

1 Your Honor, William Cremshaw on behalf of various  
2 landlords and particular with regard to objection  
3 607. We have a distribution center in California  
4 where our rent is due in and we agreed with the  
5 debtor for a payment that was due on November 30th,  
6 we have agreed to prorate that from the postpetition  
7 period with the understanding that in the event the  
8 lease is subsequently rejected we would also be  
9 entitled to run it on a prorated basis.

10 So if they reject it on the  
11 15th of the month then we would get half of the rent  
12 for that month even though the rent wasn't due until  
13 later. We just wanted to clarify that for  
14 the record.

15 THE COURT: Thank you.

16 MR. GALARDI: Your Honor, the clarification  
17 on the proration are absolutely fine. One of the  
18 clarification -- I guess the benefit of being an  
19 objector is hearing some of the argument  
20 from other counsel. So I will make it clear.  
21 if you are an objector even if you didn't ask  
22 for your stub rent on any one of those three  
23 documents but you are here objecting to any one  
24 of those three motions you still have the right  
25 and you don't have to file, you can make argument

1 and get what ever benefit with respect to stub rent  
2 on December 22nd.

3 THE COURT: That is what I understood  
4 you to say before we took the break.

5 MR. GALARDI: And, Your Honor, finally  
6 on 365(d) motions to compel, and motions to shorten  
7 time we reserve all of our rights as we do  
8 otherwise.

9 MR. LEUSIN: Your Honor, if I may  
10 be heard telephonically?

11 THE COURT: Who is speaking please?

12 MR. LEUSIN: Your Honor, this  
13 is Sean Leusin. I represent VIWY Limited  
14 Partnership. We filed an objection and I believe  
15 it's docket number 711, with respect to this matter.

16 Mr. Galardi said earlier that  
17 the deal that was set forth on the record related  
18 to landlords in the room, and he just said a  
19 moment ago landlords that are there, I just want  
20 to make sure it covers me telephonically.

21 MR. GALARDI: Yes, as long as Mr.  
22 Leusin stays on the phone. I meant anybody that has  
23 filed an objection, Your Honor.

24 MR. LEUSIN: Thank you.

25 THE COURT: All right.

1                           MR. GALARDI: Your Honor, I think  
2                           that is all of the objections to 21 so we will be  
3                           putting in an order with respect to that.

4                           Your Honor, I haven't identified  
5                           every counsel with every lease, but I think number  
6                           22 has now been continued over to the December 22nd,  
7                           which is the motion of Burbank Mall Associates to  
8                           postpetition rent.

9                           MR. (inaudible): I represent  
10                          Burbank Mall and that is correct, and also with  
11                          number 23 Crown CCI.

12                          THE COURT: That is going to be  
13                          carried over to the 22nd.

14                          Now will that be at the 1:00 time;  
15                          is that correct?

16                          MR. GALARDI: Yes, Your Honor.

17                          If it would make it easier for all  
18                          landlord counsels to do their matters at 1:00, and  
19                          then whatever else we can do in the mornings I think  
20                          would be appropriate.

21                          THE COURT: That is what I thought  
22                          you said, I just wanted to make sure I understood.

23                          MR. GALARDI: Your Honor, I think  
24                          that takes care of matter 23 as well.

25                          Now I'm up to matter 24, which

1 is also a motion to compel rents, to pay  
2 administrative rent. Again, I don't know which  
3 Counsel represented them but there is an agreement  
4 to adjourn.

5 MR. MICHAEL (inaudible): I represent  
6 woodlawn Trustees, also represent docket 25, 502-12  
7 86th Street, and number 27, the Basile Limited  
8 Liability Company and we do agree to adjourn on the  
9 22nd.

10 THE COURT: And that will be at  
11 1:00 also.

12 MR. GALARDI: Your Honor, that  
13 takes care of numbers 24, 25, 27, and number 26 on  
14 the docket is already handled. And I think we moved  
15 number 27 to the 22nd.

16 THE COURT: That's correct.

17 MR. GALARDI: Number 28 is already  
18 addressed, which brings us to matter 29, debtors  
19 motion a bar date. There are a number of objections  
20 filed and I know there are a number of landlord  
21 objections, and there are a number of taxing  
22 authorities objections. I think the landlord  
23 objections are now resolved. We have a language  
24 I will make it clearer, that it is the later  
25 of the bar dates 30 days after the rejection

1 or as otherwise provided in any order by the  
2 Court.

3 I don't know if there are other  
4 parties in court that have objections to the  
5 bar date, notice or order. And I don't know  
6 if Your Honor has any other concerns.

7 THE COURT: Does any party wish  
8 to speak to the motion of setting the bar dates?

9 It appears that you have resolved  
10 all of your objections to the Court's finding.

11 MR. GALARDI: Thank you, Your Honor.  
12 We will submit an order reflecting those changes,  
13 again with the revisions.

14 Your Honor, let me turn to matter  
15 30, which is the bidding. Again, I think with all  
16 of the representation I have put on the record  
17 and of the order, I believe that resolves the  
18 matters listed in number 30.

19 THE COURT: Does any party wish to  
20 be heard?

21 MR. DAVID (inaudible): I really have  
22 more of a question on next Monday on the 22nd. I  
23 filed in some my motions requesting joining with  
24 other landlords. I don't have a substantive objection  
25 as to the information -- would the Court entertain

1 just one party with other counsel to piggyback in  
2 with other Counsel on the same issue and let them  
3 argue the issue and abide by the Court's order.

4 THE COURT: Certainly.

5 MR. GALARDI: Number 31 is the  
6 Panasonic motion, Your Honor. I think Your Honor  
7 has already ruled on that matter.

8 Number 32 is another motion  
9 to compel the immediate payment of stub rent.

10 My understanding is that has already  
11 been resolved Your Honor.

12 MR. WESTERMAN: That's correct.

13 THE COURT: You need to identify  
14 yourself.

15 MR. WESTERMAN: I'm sorry.

16 Robbie Westerman.

17 THE COURT: Thank you.

18 MR. WESTERMAN: It's docket number  
19 471, Your Honor. It was a motion to compel  
20 payment of rent. I think it may be number 31 on  
21 the revised agenda.

22 MR. GALARDI: I think it's number  
23 32, Your Honor.

24 THE COURT: Yes, I have it as number  
25 32.

1                           MR. WESTERMAN: That matter has  
2                           been resolved.

3                           THE COURT: All right.

4                           MR. WESTERMAN: And we have prior  
5                           objections as well that has been resolved and that  
6                           can be taken off as well.

7                           THE COURT: All right.

8                           MR. WESTERMAN: Thank you.

9                           MR. GALARDI: Your Honor, that brings  
10                          us to the last matter on the agenda, which was  
11                          demand by Green 521, this is I believe again a stub  
12                          rent issue. And I believe that it is resolved,  
13                          actually putting that over to the 22nd.

14                          THE COURT: So we will put that over  
15                          to 12-22 at 1:00.

16                          MR. GALARDI: That concludes the  
17                          matters on the agenda, Your Honor. And I appreciate  
18                          all of the time for being able to talk.

19                          THE COURT: Thank you. I compliment  
20                          Counsel on being able to resolve all of these  
21                          complicated issues.

22                          MR. GALARDI: Thank you.

23

24                          (Hearing concluded.)

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1                   CERTIFICATE OF COURT REPORTER

2

3                   I, Anne M. Nelson, hereby certify that I,  
4                   having been duly sworn, was the Court Reporter in  
5                   the United States Bankruptcy Court, Richmond,  
6                   Virginia, on December 5th, 2008, at the time of  
7                   the hearing herein.

8                   I further certify that the foregoing transcript  
9                   is a true and accurate record of the testimony and  
10                  other incidents of the hearing herein.

11                  Given under my hand this 12th day of December, 2008.

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14                  /s/ Ann Marie Nelson  
15                  Court Reporer

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